

Supreme Court, U. S.

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No. 76-931

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In the Supreme Court of the United States

OCTOBER TERM, 1976

ROBERT STOPS AND NORMA STOPS, PETITIONERS

v.

LITTLE HORN STATE BANK

*ON PETITION FOR A WRIT OF CERTIORARI  
TO THE SUPREME COURT OF THE  
STATE OF MONTANA*

MEMORANDUM FOR THE UNITED STATES  
AS AMICUS CURIAE

WADE H. McCREE JR.,  
*Solicitor General,*  
*Department of Justice,*  
*Washington D.C. 20530.*

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This memorandum is submitted in response to this Court's order of February 28, 1977, requesting the views of the United States. It is the position of the United States that although the extent of state court jurisdiction over Indians and their property located within an Indian reservation is an issue of continuing importance, this case does not provide a suitable vehicle for plenary review.

STATEMENT

Petitioners are enrolled members of the Crow Indian Tribe residing on the Crow Reservation. On July 15, 1970, they entered into a loan agreement with the Little Horn State Bank in Hardin, Montana, which is located outside the exterior boundaries of the Crow Reservation. The Stops defaulted on the loan and the bank repossessed

certain farm machinery and filed an action in the state district court on the note.

Petitioners were served with process at their home on the Crow Reservation. They filed a motion to dismiss for want of personal jurisdiction, which was denied, but did not question the subject matter jurisdiction of the state court. The court then entered judgment against petitioners in the amount of \$3,541.24.

Following judgment, the court issued, on February 23, 1976, a writ of execution directed to the Sheriff of Big Horn County, who proceeded to garnish wages of the petitioners earned on the Reservation.<sup>1</sup> Petitioners sought and obtained injunctive relief against the writ of execution in the state district court.

On appeal, the Supreme Court of Montana reversed. The court reasoned that by acquiring subject matter jurisdiction to hear the original litigation, the state court also acquired jurisdiction to ensure satisfaction of the

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<sup>1</sup>The writ of execution giving rise to this litigation was directed at petitioners' wages earned on the Reservation as employees of the National Park Service and the U.S. Public Health Service (Pet. App. 2b). The employers were not joined as parties and petitioners did not raise the employers' immunity from garnishment as agencies of the United States. The United States has not consented to writs of garnishment against the wages of its employees for debts arising from commercial loan transactions. See *Buchanan v. Alexander*, 4 How. (45 U.S.) 20; S. Rep. No. 93-1356, 93d Cong., 2d Sess. 53 (1974).

The order of the Montana district court, however, enjoined the bank "from levying execution on the judgment entered herein upon the property of the defendants and their wages within the Crow Indian Reservation" (Pet. App. 1b). After the judgment of the Supreme Court of Montana dissolving this injunction, and prior to the filing of the present petition, the respondent bank executed on three motor vehicles owned by petitioners. The parties have agreed upon a stay of execution for the remaining balance of the judgment (\$1,300); that amount is posted in the state district court.

judgment entered therein. Applying the test of *Williams v. Lee*, 358 U.S. 217, the court found no interference with the right of the Crow Tribe to govern itself (Pet. App. 6a-7a):

The Crow Tribe provides no means of enforcing state court judgments, no method of attaching property of a state judgment debtor, and is not subject to the full faith and credit clause as sister states are. Until the Crow Tribe has provided a means of such enforcement or acted in some manner within this area, we fail to see how tribal self-government is interfered with by assuring that reservation Indians pay for their debts incurred off the reservation.

The court therefore dissolved the injunction.

#### DISCUSSION

1. While we believe that the Montana Supreme Court may have erroneously concluded that execution on the state court judgment within an Indian reservation would not undermine the authority of the Crow tribal court, in light of the uncertain record and narrowness of the issue in this case we do not recommend further review.

Although state courts generally may exercise jurisdiction over persons, property, and events occurring within the boundaries of the State, that principle has been significantly modified in the context of Indian reservations. When "civil causes of action between Indians or to which Indians are parties \* \* \* arise in the areas of Indian country situated within such State," state court jurisdiction may be exercised only in accordance with the provisions of the Civil Rights Act of 1968, Section 402(a), 82 Stat. 79, 25 U.S.C. 1322(a), which require affirmative assumption of jurisdiction by the State and the approval of a majority of the affected tribal members. *Fisher v. District Court*, 424 U.S. 382. This

limitation applies even when one party to the lawsuit is a non-Indian. *Kennerly v. District Court*, 400 U.S. 423. While state courts have somewhat greater latitude over causes of action arising outside of Indian country, we believe that any related exercise of jurisdiction over Indians within the boundaries of their reservation must be circumscribed so that it does not "undermine the authority of the tribal courts over Reservation affairs and hence \*\*\* infringe on the right of the Indians to govern themselves." *Williams v. Lee*, *supra*, 358 U.S. at 223.

In our view, the enforcement of state court judgments against Indians residing within an Indian reservation, without recourse to established tribal courts, directly "undermine[s] the authority of the tribal courts over Reservation affairs." The Montana Supreme Court declined to reach that conclusion in this case, however, stating that "[t]he Crow Tribe provides no means of enforcing state court judgments, no method of attaching property of a state judgment debtor, and is not subject to the full faith and credit clause as sister states are" (Pet. App. 6a-7a). This statement apparently was based on the court's belief that "in the situation at hand the Crow Tribal Court only exercises jurisdiction over civil litigation between members and non-members if both parties so stipulate" (*id.* at 6a). This statement is disputed by petitioners (Pet. 11-12) and by the Tribe as *amicus curiae* (Br. 6-8).

The question whether direct execution on the Reservation in this case would undermine tribal court authority, therefore, depends in large part upon whether recourse to the Crow tribal court would necessarily have been unavailing. Although the positions urged by petitioners and by the Tribe seem reasonable, the record does not enable one to conclude with assurance that the Montana Supreme Court erred in finding that no remedy in the tribal court was

available. We do not believe that plenary review of this question is warranted.<sup>2</sup>

2. Moreover, although this case raises a question of general importance regarding the right of reservation Indians to be free of state judicial control, it comes to the Court in an especially narrow posture. While petitioners contested service of process upon them within the Reservation, moving to dismiss the complaint for want of personal jurisdiction, they did not challenge the denial of their motion on appeal. Therefore, the sole question presented to this Court is whether a state court, having assumed jurisdiction over reservation Indians and rendered a valid judgment, may subsequently permit satisfaction of that judgment by execution on property located within an Indian reservation.

The question whether state court process may be served within a reservation to assert personal jurisdiction over a tribal member has been litigated with conflicting results in several state court actions arising from transactions or events occurring outside the boundaries of reservations. Compare *Franciso v. Arizona*, 556 P. 2d 1 (Ariz.), with *Bad Horse v. Bad Horse*, 163 Mont. 445, 517 P. 2d 893, certiorari denied, 419 U.S. 847; *State Securities, Inc. v. Anderson*, 84 N.M. 629, 506 P. 2d 786. See also *Benally v. Marcum*, 89 N.M. 463, 553 P. 2d 1270. In our view, the effectiveness of personal service upon an Indian on his reservation raises issues similar to, and closely connected with, the legitimacy of execution on that Indian's property and wages within a reservation. Thus, the Court may wish to defer consideration of these issues and thereby allow further

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<sup>2</sup>We note that a federal district court prohibited enforcement of a state court judgment upon a reservation. *Annis v. Dewey County Bank*, 335 F. Supp. 133 (D. S.D.).

development of the governing principles in the state and federal courts.

**CONCLUSION**

The petition for a writ of certiorari should be denied.

Respectfully submitted.

**WADE H. McCREE, JR.,**  
*Solicitor General.*

APRIL 1977.